

**California Regional Water Quality Control Board
North Coast Region**

Cleanup and Abatement and 13267 Order No. R1-2021-0053

for

Aleksandar Aleksandrov, OPENROADAGENCY LLC, and Otto Farms LLC

Humboldt County

Assessor's Parcel Numbers 208-111-020 and 208-111-021 (the Property)

This Order is issued to Aleksandar (Aleks) Aleksandrov, OPENROADAGENCY LLC, and Otto Farms LLC (hereafter referred to as the Dischargers) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports (Order).

The Executive Officer finds, with respect to the Dischargers' acts, or failure to act, the following:

1. **Site Conditions:** Little Larabee Creek, and its unnamed tributaries, are waters of the state, as well as waters of the United States (references hereafter to waters of the United States are also waters of the state).¹ The Dischargers have caused or allowed the discharge and threatened discharge of waste to receiving waters through development/expansion and use of roads, stream crossings, and cultivation flats at the Property without properly designed/constructed stream crossings, road drainage features, or riparian protection measures, and without use/application of adequate erosion and sediment control best management practices. The Dischargers' activities resulting in waste discharges were conducted without authorization from applicable federal, state, and local agencies, including the Regional Water Board.

¹ The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those water as "waters of the United States." Waters of the United States has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries. (40 C.F.R. 122.2) The Porter-Cologne provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Wat. Code § 13260.) The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code § 13050 subd. (e).) All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

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Features and conditions on the Property of particular water quality concern include:

- a. A cannabis cultivation area on unstable ground at a location where drainage, erosion, and slope failure pose high risks to downslope receiving waters;
 - b. Three improperly designed/constructed stream crossings on the access road to the Property;
 - c. The Property access road, which is hydrologically connected to and crosses Little Larabee Creek, shows evidence of sediment discharges in violation of water quality standards;
 - d. A riparian area of a Class III watercourse cleared of vegetation and showing evidence of disturbance with heavy equipment; and
 - e. Petroleum-contaminated soils at three locations, due to spills/leaks from a generator and water pump.
2. **Purpose of the Order:** This Order requires the Dischargers to clean up and abate the effects of discharging sediment and petroleum fuels into Little Larabee Creek and unnamed tributaries thereto, and to eliminate the threat of future discharges. Investigation and cleanup actions required under this Order shall be conducted in compliance with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.
3. **Responsible Parties:** The Dischargers, as the Property owner and/or operator and the person discharging or creating a threat of discharge, with the legal ability to control the activities on the property that resulted in the discharge and/or threat of discharge, is a responsible party for purposes of this Order. This Order finds that Dischargers Aleks Aleksandrov, OPENROADAGENCY LLC, and Otto Farms LLC are the responsible parties and are all jointly and severally liable]:
 - a. The Property is comprised of two adjacent 40-acre parcels, associated with Humboldt County APNs 208-111-020 and 208-111-021 (herein the Property). The Property was last transferred on April 29, 2016 by David Wight to OPENROADAGENCY LLC.
 - b. Parcel information available from the Humboldt County Assessor-Recorder's Office, as presented in Digital Map Products LandVision™ online service, indicates that OPENROADAGENCY LLC owns the Property.

OPENROADAGENCY LLC is registered with the California Secretary of State as of November 26, 2019, as a Delaware Limited Liability Company, with Alek Aleksandrov as the Agent for Service of Process, with an address of 37200 State Highway 36, Bridgeville. Currently the OPENROADAGENCY LLC status is listed as FTB Forfeited.

- c. On October 13, 2016, Aleksandar Aleksandrov enrolled as Discharger for the Property, through Natural Resource Management Corporation (NRM), for coverage under Order No. R1-2015-0023 *Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operation with Similar Environmental Effects* (Regional Cannabis Order).
 - d. On June 10, 2019, with assistance from NRM, Aleksandar Aleksandrov submitted an application for APN 208-111-021 to be enrolled for coverage under Order No. WQ-2019-0001-DWQ, *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Statewide Cannabis General Order). The application identified Otto Farms LLC as the cultivator contact person, and Aleksandar Aleksandrov as the cultivator contact person, and Open Road Agency LLC as the landowner, and Aleksandar Aleksandrov as the landowner contact person. On March 5, 2021, the Regional Water Board issued a Notice of Applicability enrolling 208-111-021 with Otto Farms as Discharger. According the California Secretary of State website, Otto Farms LLC registered on December 16, 2016, with Aleksandar Aleksandrov as both the Sole Manager of the LLC and the Agent for Service of Process. Currently the Otto Farms LLC status is listed as FTB Forfeited.
 - e. The Regional Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
4. **Property Location and Description:** The Property is located in Humboldt County. Land development and use for cannabis cultivation and associated activities occurred on land that drains to Little Larabee Creek and its unnamed tributaries, which drains to the Van Duzen River, tributary to Lower Eel River. The Property is in the vicinity of latitude 40.47663 and longitude -123.771, and is approximately 0.5 miles upstream of the confluence of Little Larabee Creek with the Van Duzen River and State Highway 36, just east of Bridgeville.

5. **Property History:**

- a. APN 208-111-020:
 - i. NRM initially enrolled APN 208-111-020 for coverage under the Regional Cannabis Order as a Tier 2 site, and Regional Water Board staff

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assigned this enrollment WDID 1B161547CHUM, effective November 2, 2016. In assessing APN 208-111-020, on behalf of the Discharger, NRM staff identified a large, active landslide extending from upslope areas and encompassing portions of the parcel, rendering the cultivation areas not viable. NRM, in consultation with Regional Water Board staff, concluded that the site conditions posed an immediate threat to water quality, and recommended cleanup and restoration of the cultivation areas, access road, and stream crossings.

- ii. With assistance from NRM, Aleksandar Aleksandrov revised his application for enrollment under the Regional Cannabis Order to Tier 3, and paid the required fee, effective February 9, 2017, triggering the requirements to develop and implement a cleanup and restoration plan, as described further, below.
 - iii. On October 25, 2017, staff from the Regional Water Board and the California Department of Fish and Wildlife (CDFW) met onsite with staff of NRM and Mr. Aleksandrov to evaluate Property conditions in light of the Landslide Report (See Attachment 1 – October 25, 2017 Inspection Report). Following the inspection, Mr. Aleksandrov agreed to decommission the features that threatened water quality. On July 19, 2018, Regional Water Board staff inspected the Property and reviewed preliminary design plans for the Tier 3 cleanup and restoration plan, in the company of staff from other permitting agencies (See Attachment 2 – July 19, 2018 Inspection Report). On July 25, 2018, NRM submitted the Tier 3 Cleanup and Restoration Plan (Attachment 4A – Tier 3 Plan).
 - iv. On November 4, 2020, CDFW and CalFire staff inspected both parcels associated with the Property and identified violations. Following this inspection, CDFW issued a Notice of Violation (Attachment 3 – CDFW November 12, 2020, Notice of Violation), indicating that, on this parcel, they had identified ongoing use of the ford through Little Larabee Creek, evidence of instream disturbance with heavy equipment at the ford to facilitate vehicle traffic, and spilled petroleum associated with a water diversion pump located next to Little Larabee Creek.
- b. APN 208-111-021:
- i. On behalf of the Dischargers, NRM enrolled this parcel for coverage under Tier 2 of the Regional Cannabis Order, effective November 2, 2016.
 - ii. On October 25, 2017, staff from the Regional Water Board and CDFW met onsite with staff of NRM and Mr. Aleksandrov, in order to evaluate the site conditions on APN 208-111-021 and provide recommendations

for compliance with the Regional Cannabis Order (See Attachment 1 – October 25, 2017 Inspection Report).

- iii. On June 10, 2019, Otto Farms LLC submitted a request to transfer enrollment of APN 208-111-021 from the Regional Cannabis Order to the Statewide Cannabis General Order. According to a March 5, 2020, Notice of Applicability from the Regional Water Board to Otto Farms (Attn: Aleksandar Aleksandrov), APN 208-111-021 was enrolled for coverage under the Statewide Cannabis General Order, with cannabis cultivation activities classified as Tier 1 Low Risk. The enrollment is active.
 - iv. The CDFW NOV associated with the joint CDFW/CalFire November 4, 2020 inspection indicates that on this parcel, large conifer trees had been removed from within the Statewide Cannabis General Order's Class III watercourse setback of 50 feet, impacting an approximately 300-foot length of stream riparian area, and resulting in threatened discharge of sediment associated with equipment work in- and near surface waters. This disturbance also requires reclassification of the enrollment as High Risk.
6. **Factual Basis of Order:** The Dischargers' activities and/or the conditions observed at the Property, as documented in the Regional Water Board inspection reports, provided to the Dischargers on August 17, 2018, and the November 12, 2020, CDFW Notice of Violation, and as detailed below, created and/or threaten to create condition of pollution in waters of the state by unreasonably impacting water quality and beneficial uses.
- a. APN 208-111-020 Cleanup and Restoration
 - i. Under the Regional Cannabis Order, pursuant to Water Code section 13304, Tier 3 Dischargers were to develop and implement a cleanup and restoration plan as detailed in Order R1-2015-0023, Section I.C., and to comply with applicable standard conditions identified in Section I.A. The cleanup and restoration plan was required to be prepared by a California registered civil engineer or professional geologist, and to be submitted to the Executive Officer for review and approval. Upon approval of the cleanup and restoration plan by the Executive Officer, the Dischargers were required to implement the plan, incorporating any additional conditions or monitoring and reporting provision included in the Executive Officer's approval.
 - ii. On October 4, 2017, NRM submitted a September 22, 2017 evaluation of the landslide, prepared by David N. Lindberg, CEG, of Lindberg Geologic Consulting. Mr. Lindberg's evaluation is entitled, *Preliminary*

Engineering-Geologic Landslide Reconnaissance Letter-Report, APN 208-111-020 (Landslide Report). On October 25, 2017, staff from the Regional Water Board and the California Department of Fish and Wildlife (CDFW) met onsite with staff of NRM and Mr. Aleksandrov, in order to evaluate the site conditions in light of the Landslide Report (See Attachment 2 – October 25, 2017 Inspection Report). Following the inspection, Mr. Aleksandrov agreed to decommission the features that threatened water quality. On July 19, 2018, Regional Water Board staff inspected the Property and reviewed the design plans for the Tier 3 cleanup and restoration plan, in the company of staff from other permitting agencies (See Attachment 3 – July 19, 2018 Inspection Report). NRM staff provided preliminary plans for proposed treatments.

- iii. On August 10, 2018, on behalf of the Dischargers, NRM provided to Regional Water Board staff, for review and approval, a workplan and schedule, pursuant to the Regional Cannabis Order cleanup and restoration plan requirements, titled Remediation and Monitoring Plan for the Retirement Remediation and Relocation (RRR) of APN 208-111-020 WDID 1B161547CHUM V3 Prepared by Natural Resources Management Corporation, July 25, 2018. On September 17, 2019, NRM submitted an addendum, Change to Project Description for RRR and Cleanup and Restoration Plan APN 208-111-020 WDID 1B161547CHUM. The July 2018 Remediation and Monitoring Plan together with the September 2019 amendment comprise the Tier 3 Cleanup and Restoration Plan for APN 208-111-020 (the Tier 3 Plan) as required by the Regional Cannabis Order (Attachment 4A).
- iv. The Tier 3 Plan is adequate to address the threats to water quality from the access road, stream crossings to the cultivation area. It includes a proposal to decommission an access road and three associated stream crossings, to decommission two cultivation areas, and to close the road to vehicular access to Little Larabee Creek and associated stream ford.
- v. Regional Cannabis Order coverage for APN 208-111-020 terminated on June 30, 2019, prior to the approval of the Tier 3 Plan and completion of the remediation work.
- vi. This Order approves and requires implementation of the Tier 3 Plan for APN 208-111-020 and submission of a completion report demonstrating the success of the remediation work.

b. Hazardous Materials Remediation

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- i. As documented in the CDFW NOV (Attachment 3 – CDFW November 12, 2020, Notice of Violation), fuel associated with a water pump had spilled onto the ground, contaminating soil next to Little Larabee Creek.
 - ii. In response to the CDFW NOV, on behalf of the Dischargers, consultant GHD developed the *Limited Remedial Excavation Work Plan, Open Road Agency Property Soil Removal Project, APNs: 208-111-020 and 208-111-021* (Appendix 4, Attachment C – Hazardous Materials Remediation Plan, April 29, 2021). The Hazardous Materials Remediation Plan identifies three locations on the Property with petroleum-contaminated soils, including the site adjacent to Little Larabee Creek, and two other upslope locations
 - iii. According to the Hazardous Material Remediation Plan, US Ecology removed 4 cubic yards of sand, gravel, and soil for Remedial Site 1, adjacent to Little Larabee Creek prior to streamflows inhibiting further work to complete the scope of work contained in the plan.
 - iv. This Order approves and requires implementation of the Hazardous Materials Remediation Plan on both APN 208-111-020 and 208-111-021, and submission of a completion report demonstrating the success of the remediation work.
- c. APN 208-111-021 Disturbed Area Stabilization
 - i. As documented in the CDFW NOV for APN 208-111-021 (Attachment 3), the Dischargers cleared large conifer trees within the Statewide Cannabis General Order Class III watercourse setback of 50 feet, resulting in riparian impacts along 300 feet of stream, and threatening discharge of sediment associated with near-stream equipment work. The riparian disturbance violates the Statewide Cannabis General Order and triggers the requirement for submission of a Disturbed Area Stabilization Plan (DASP) to the Regional Water Board Executive Officer for approval to stabilize any disturbed area within the minimum setback area for waters of the state.
 - ii. On May 20, 2021, on behalf of the Dischargers, NRM submitted to the Regional Water Board, a document entitled *Watercourse Restoration and Remediation Plan for Aleksandar Aleksandrov, WDID 1_12CC417024, APN 208-111-021* (See Attachment 4C – Disturbed Area Stabilization Plan). This DASP includes a proposal to remove approximately 10 cubic yards of slash and earthen spoils located in and adjacent to a Class III watercourse, to stabilize the disturbed area, and to revegetate the setback with native species.

- iii. The DASP includes information on actions to prevent and minimize erosion and sediment transport, to recontour and replant the disturbed area; and to monitor and report on compliance with the Statewide Cannabis General Order. Staff has reviewed the DASP and has found that it provides sufficient information to fulfill the requirements for a DASP as specified in the Cannabis General Order.
 - iv. This Order approves and requires implementation of the Disturbed Area Stabilization Plan for APN 208-111-021, and submission of a completion report demonstrating the success of the restoration work.
7. **Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives:** The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference the plans and policies adopted by the Regional Water Boards.
- a. Existing and potential beneficial uses for Little Larabee Creek and its tributaries are identified in the Basin Plan Table 2-1, associated with the Van Duzen River Hydrologic Areas/Bridgeville Hydrologic Subarea (111.21), include the following: Municipal & Domestic Supply (MUN); Agricultural Supply (AGR); Aquaculture (AQUA), Warm (WARM) & Cold (COLD) Freshwater Habitat; Commercial and Sport Fishing (COMM), Freshwater Replenishment (FRSH), Groundwater Recharge (GWR), Industrial Service Supply (IND), Migration of Aquatic Organisms (MIGR); Navigation (NAV), Hydropower Generation (POW), Industrial Process Supply (PROC), Water Contact Recreation (REC-1) and Non-Contact Water Recreation (REC-2), Spawning (SPWN); and Wildlife Habitat (WILD). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
 - b. The Basin Plan contains specific standards and provisions for maintaining high-quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan's Action Plan for Logging, Construction, and Associated Activities (Action Plan) includes two waste discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan):
 - i. Prohibition 1 – “The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”
 - ii. Prohibition 2 – “The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities

which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”

- c. Section 3 of the Basin Plan contains water quality objectives not to be exceeded as a result of waste discharges. The water quality objectives that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from land development and cannabis cultivation activities include the following:

- i. Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
- ii. Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
- iii. Sediment: “The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.”
- iv. Turbidity: “Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.”

8. **Regional Water Board Resolutions:** As part of Regional Water Board’s efforts to control sediment waste discharges and restore sediment impaired water bodies, the Regional Water Board adopted the *Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region*, which is also known as the Sediment TMDL Implementation Policy, on November 29, 2004. This Policy was adopted through Resolution R1-2004-0087. The Sediment TMDL Implementation Policy directs the Executive Officer to use “all available authorities, including existing regulatory standards and permitting and enforcement tools, to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.” The goals of the policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.
9. **State Water Board Resolutions and Orders:** State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with

State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* ("Resolution 68-16"). Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup. Additionally, Executive Order W-59-93, also referred to as the "No Net Loss Policy," which has been incorporated into the Basin Plan, acknowledges the environmental and economic benefits of wetlands to the people of this state and identifies three primary objectives, including protection against net loss and an aim for long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California.

10. **Legal Authority to Require Cleanup and Abatement:** Water Code section 13304, subdivision (a) states, in relevant part:

A person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and causes, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts....Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

- a. "Waste" is defined by Water Code section 13050, subdivision (d) to include, sewage and any other waste substances, whether liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin,

or from any producing, manufacturing, or processing operation, including waste placed within containers prior to, and for purposes of, disposal.

- i. Sediment, when discharged to waters of the state, is a “waste” as defined in Water Code section 13050. The Dischargers caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to Little Larabee Creek, a tributary of Van Duzen River, which is considered a water of the state.
- b. “Pollution” is defined by Water Code section 13050, subdivision (l)(1) as, an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either waters of the state for beneficial use or facilities which serve these beneficial uses.
 - i. Earthen material from onsite roads, cultivation areas located within or adjacent to watercourses, erodible soils on road and cultivated surfaces, and improperly contained garbage, debris, fuels, and chemicals on property owned and/or used by the Dischargers has discharged, and still has the potential to discharge, sediment and other waste into Little Larabee Creek and its tributaries in violation of Water Code sections 13260 and 13376 and provisions of the Basin Plan, and creates or threatens to create a condition of pollution subject to this Order in accordance with Water Code section 13304.
 - ii. Site development activities conducted by the Dischargers, their agents, and/or their tenants, in addition to inadequate maintenance or pollution control efforts on existing site features, improper storage of fertilizers, soil amendments and other waste materials, and inadequate human waste handling/disposal features have resulted in the unauthorized discharge or threat of discharge of waste into surface water and groundwater, and have created, or threaten to create, a condition of pollution by unreasonably affecting the beneficial uses of waters of the state. Little Larabee Creek and tributaries thereto pass through the Property with many features of concern located adjacent to or draining into the Creek and/or tributaries. Features of concern include near stream cultivation areas, an access road and associated stream crossings that are sediment sources to Little Larabee Creek and its tributaries, sediment sources resulting from riparian disturbance by the Dischargers, and contamination of soil caused by inappropriate handling of fuels.
 - iii. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment

and turbidity, accelerated erosion of the watercourse bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten wildlife habitat and aquatic species (Beneficial Uses impacted: RARE, MIGR, SPWN, COLD, COMM, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (Beneficial Uses impacted: AGR and MUN). Sediment laden storm water discharges to surface water and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters (Beneficial Uses impacted: REC-1 and REC-2).

- iv. The discharge of organic and earthen material in the Van Duzen River watershed is especially problematic because, as noted above, the Van Duzen River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to several pollutants, including sedimentation/siltation. Sediment delivery impacts the migration, spawning, reproduction, and early development of cold water fish such as spring and fall run Chinook salmon, coho salmon, and steelhead trout.
- v. Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic life by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment which requires that the suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses. As stated above, sediment is a pollutant that can have substantial biological, chemical, and physical effects on receiving waters.

These include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation through burial of bottom dwelling (benthic) organisms, and salmonid eggs, and alevin (newly spawned salmon or trout still carrying its yolk). Sediment can also physically damage gills causing fish mortality; increased physiological stress; reduce reproduction; impair normal feeding and predator avoidance behaviors, resulting in impacts to commercial and recreational fishing resources; increase water temperature; and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat.

It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with suspended sediment, sediment is also an excellent transport mechanism for toxics (e.g., metals and synthetic organics), which bind to sediment particles (Beneficial Uses impacted: REC-1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

- vi. Discharge of excess nutrients, especially nitrates and phosphorus, can lead to eutrophication and algal blooms. Algal blooms can block light, clog fish gills, and cause an increase for biological oxygen demand as they die, severely lowering dissolved oxygen levels available to sustain aquatic ecosystems. Lowered dissolved oxygen concentrations can also provide favorable conditions for proliferation of pathogenic bacteria. In addition, excess nutrients can contribute to toxic algal blooms which create bioaccumulative toxins that can be deleterious to aquatic ecosystems and wildlife that may consume aquatic fauna (Beneficial Uses impacted: RARE, MIGR, WILD, COLD, COMM, and SPWN). Eutrophication and algal blooms can also affect the recreational and aesthetic enjoyment of surface waters. Direct exposure to toxic algae can lead to rashes, respiratory problems, and neurological effects in humans, and can raise costs for water treatment plants and contribute to harmful byproducts when treated (Beneficial Uses impacted: REC-1, REC-2, and MUN).
11. **Cleanup and Abatement Action Necessary:** Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a priority violation and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board.
12. **Technical Reports Required:** Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any water of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to waters of the state and to ensure that cleanup complies with

Basin Plan requirements and State Water Board Resolution 92-49. In accordance with Water Code section 13267, subdivision (b) the findings in this Order provide the Dischargers with a written explanation with regard to the need for remedial action and reports and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit the reports. The Dischargers named in this Order own and/or operate the Property from which waste was discharged, and thus is appropriately responsible for providing the reports.

The Order requires three types of technical and monitoring reports. Staff estimate the cost of the reports to be approximately \$4,340 to \$16,080:

- a. *The Cleanup, Restoration, and Monitoring Plan (CRMP)* is a technical report that is necessary to: (1) assess impacts to waters of the state resulting from the roads and facilities used for cannabis cultivation on the Property; (2) determine the appropriate restoration and abatement work to correct those impacts; and (3) create a plan along with an implementation schedule that will guide the scope of work to clean up and abate the discharges and threat of discharge on the Property. The CRMP was developed under enrollment in the Regional Cannabis Order. The anticipated benefits from the CRMP include restoration of altered natural drainage and protection from actual and threatened waste discharges that impact beneficial uses and water quality objectives. In addition, by requiring the Discharger to submit a CRMP, the Regional Water Board or its delegated officer will have the opportunity to review and approve the scope of the proposed restoration and corrective actions to confirm that the proposed work will adequately remediate site conditions and prevent sediment discharges from further impacting the beneficial uses of sensitive water bodies. As previously mentioned, the Mad River is a Clean Water Act section 303(d)-listed impaired water body due to sediment/siltation and high water temperature, thereby heightening the need for this technical report in order to reduce further impairment to waters of the state. The CRMP requirements (i.e., field inspection and report preparation) are comparable to that of preparing a combined Site Management Plan and Site Erosion and Sediment Control Plan as presented in the State Water Resources Control Board, October 2017, Direct Cost Analysis For the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis)², which is estimated to cost between \$2,760 and \$9,920. Work in surface waters that is subject to regulation under a section 401 water quality certification, waste discharge requirements or waiver thereof, may have comparable completion report requirements that may serve to fulfill part of the requirements for the CRMP without additional cost. The burden, including costs, of preparing and

²https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf

submitting the CRMP therefore bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.

- b. *A Completion Report* is necessary to demonstrate that the Discharger has successfully implemented and completed the CRMP activities in a timely manner in accordance with the implementation schedule set forth in the CRMP and this Order. The benefit derived from a Completion Report is documented evidence that remedial activities and best management practices were implemented to ensure that cleanup and abatement activities remedy all water quality threats and impacts. The scope of a Completion Report (i.e., field inspection and report preparation) is comparable to that of preparing a Site Closure Report as described in the 2017 Direct Cost Analysis described above, which is estimated to cost between \$1,080 and \$4,760. Furthermore, work in surface waters that is subject to regulation under a section 401 water quality certification, waste discharge requirements or waiver thereof, may have comparable completion report requirements that may serve to fulfill part of the requirements for the Completion Report required here without additional cost. Note that if the Army Corps of Engineers takes permitting jurisdiction over this activity by issuing a 404 permit then the Dischargers will have to separately obtain a 401 water quality certification from the Regional Water Board. The burden, including costs, of preparing and submitting a Completion Report therefore bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.
- c. *Annual monitoring reports* are necessary to ensure that the implementation of the CRMP appropriately restored impacted beneficial uses and abated the threat of future impacts to waters of the state from the roads and facilities used for cannabis cultivation on the Property. Observation and maintenance of the completed project is required to ensure that the anticipated water quality benefits are achieved in the long-term and that CRMP components remain effective and maintained. Moreover, these reports provide further benefit by certifying that all applicable best practical treatment or control measures are implemented and properly maintained after the cleanup process. By requiring the Dischargers to submit annual monitoring reports, the Regional Water Board or its delegated officer can confirm the implemented work adequately remediated site conditions in order to prevent sediment discharges from further impacting the beneficial uses of sensitive water bodies. The annual monitoring plan requirements (i.e., field inspection and report preparation) are comparable to that of a Site Closure Report as presented in the 2017 Direct Cost Analysis described above, which is estimated to cost between \$500 and \$1,400. Furthermore, work in surface waters that is subject to regulation under a section 401 water quality certification, waste discharge requirements or waiver thereof, may have comparable monitoring requirements that may serve to fulfill the effectiveness

monitoring required here without additional cost. The burden, including costs, of preparing and submitting a Completion Report therefore bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.

12. **California Environmental Quality Act:** Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and, as such, is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup, abatement, and restoration activities at the Property. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Dischargers' proposed cleanup, abatement or restoration activities and possible associated environmental impacts. To the extent that the Order requires earth-disturbing and re-vegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan. The Dischargers will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Dischargers and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, that the Dischargers shall clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and provide the following information. The Dischargers shall obtain all necessary permits for the activities required in this Order.

1. **Implement the Cleanup, Restoration, and Monitoring Plan (CRMP):** This Order approves the CRMP comprised of the following plans:
 - a. Appendix 4A – APN 208-111-020 Tier 3 Cleanup and Restoration Plan (July 25, 2018) and Addendum (September 17, 2019)
 - b. Appendix 4B – August 26, 2021 Hazardous Material Remediation Plan
 - c. Appendix 4C – May 20, 2021 Disturbed Area Stabilization Plan

To comply with the Order, the Dischargers must implement and abide by the workplan, specifications, and timelines set forth in the CRMP, including the prescribed treatments, treatment schedule, BMPs, monitoring and reporting program, and construction oversight requirements therein, as well as any requirements included in the Cannabis Cultivation Policy and any permits issued by the Regional Water Board and other applicable agencies for the scope of work conducted.

No more than **30 days** after the effective date of this Order by the Regional Water Board or its delegated officer, the Dischargers shall begin implementation of the approved CRMP.

2. **Modifications to the CRMP:** The Dischargers shall notify and provide rationale to the Regional Water Board staff and obtain approval at least **60 days** prior to making any modifications to the approved RMMP.
3. **Complete the CRMP:** By **November 15, 2021**, the Dischargers shall fully implement and complete the CRMP.
4. **Completion Report for the CRMP:** No more than **60 days** after fully completing the CRMP, the Dischargers shall submit a Completion Report for the CRMP for approval by the Regional Water Board or its delegated officer. The Completion Report shall include accurate depictions, documentation, and as-built of all completed restoration construction and/or abatement measures included in the approved CRMP to restore Little Larabee Creek and its unnamed tributaries to demonstrate the CRMP has been fully implemented. This report shall also include pre- and post-construction photographs taken at each photo point, as depicted on site maps/figures.
5. **Annual Monitoring Reports:** Upon completion of the restoration and mitigation of waters of the state, submit annual monitoring reports by **January 31** of each year for at least five years or until the Regional Water Board or its delegated officer approves a request to discontinue monitoring. Such a request may be submitted when the approved success criteria in the CRMP are met with supporting documentation. Each annual monitoring report shall include, at a

minimum, a completed inspection checklist, photos of areas restored, a description of any locations where restoration is failing and/or needs to be corrected to achieve the success criteria.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Dischargers shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.
2. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Dischargers shall also state in the cover letter whether he/she will implement the recommendations/proposals provided in the report and the schedule for implementation. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
3. **Notice of Onsite Work:** The Dischargers, or a duly authorized agent, shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Dischargers may contact the Regional Water Board using the general phone line at (707) 576-2220 or contact Adona White at 707-576-2672.

4. **Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Property's ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.
5. **Reasonable Access:** The Dischargers shall allow the Regional Water Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to enter at reasonable times to inspect the Property and any records that must be kept under the conditions of this Order for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code.
6. **Submissions:**
All monitoring reports, technical reports or notices required under this Order shall be submitted:

By email (preferred) to:
Adona White, Water Resource Control Engineer,
Adona.White@waterboards.ca.gov and to NorthCoast@waterboards.ca.gov

Or by mail to:
North Coast Regional Water Quality Control Board
Attn: Adona White
5550 Skyline Blvd, Suite A Santa Rosa, CA 95403
7. **Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, Fish and Game Code (FGC) section 1602 requires a person or entity to notify CDFW before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. The failure to notify CDFW constitutes a violation of FGC section 1602.
8. **Cost Recovery:** Pursuant to Water code section 13304, the State or Regional Water Board is entitled to all reasonable costs it actually incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other restoration action, required by this Order. The Dischargers shall enroll in the State Water Board's Cost Recovery Program managed by the State Water Board for the discharges addressed by this Order and shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board pursuant to the procedures established in that program.

9. **Delayed Compliance:** If for any reason, the Dischargers is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Assistant Executive Officer, the Dischargers may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order or by a letter from the Executive Officer. . The Regional Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Dischargers and will take all the available relevant facts into consideration when considering whether or not to exercise its enforcement authority.
10. **Potential Liability:** If the Dischargers fail to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or a complaint for administrative civil liability may be issued by the Regional Water Board. Failure to comply with this Order may result in the assessment of an administrative civil liability of up to \$10,000 per violation per day and \$10 per gallon when the violation results in the discharge of waste, pursuant to California Water Code sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, violation of the terms and condition of this Order.
11. **No Limitation of Water Board Authority:** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Property consistent with the Water Code. This Order may be revised as additional information becomes available.
12. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board or its delegated officer including any potential extension requests.
13. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et al. The State Water Board must receive the petition no later than 5:00 p.m., 30 days following the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality
or will be provided upon request.

Cleanup and Abatement
Order No. R1-2021-0053
Humboldt County APNs 208-111-020 & 021
Little Larabee Creek

This Order is effective upon the date of signature.

Matthias St. John
Executive Officer

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Attachments:

Attachment 1 – October 24, 2017 Regional Water Board Inspection Report

Attachment 2 – July 19, 2018 Regional Water Board Inspection Report

Attachment 3 – CDFW November 12, 2021 Notice of Violation

Attachment 4 – Cleanup Restoration and Monitoring Plan:

Attachment 4A – APN 208-111-020 Tier 3 Cleanup and Restoration Plan
(July 25, 2018) and Addendum (September 17, 2019)

Attachment 4B – August 26, 2021 Hazardous Material Remediation Plan

Attachment 4C – May 20, 2021 Disturbed Area Stabilization Plan